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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1968

No. ~~1975~~ 135

FREDERICK WALZ,

*Appellant,*

*against*

TAX COMMISSION OF THE CITY OF NEW YORK,

*Appellee.*

ON APPEAL FROM THE COURT OF APPEALS
OF THE STATE OF NEW YORK

## MOTION TO DISMISS APPEAL

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## INDEX


PAGE

Preliminary Statement ..... 1

Statutes Involved ..... 2

Statement of the Case ..... 2

The Facts ..... 3

ARGUMENT:

Tax exemptions for property of religious organizations do not violate the United States Constitution ..... 4

CONCLUSION ..... 6


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## CASES CITED


*Abington School Dist.* v. *Schempp,* 374 U.S. 203 (1963) 5

*Engel* v. *Vitale,* 370 U.S. 421 (1962) ..... 5

*Garrett Biblical Institute* v. *Elmhurst State Bank,* 331 Ill. 308, 163 N.E. 1 (1928) ..... 5

*General Finance Corp.* v. *Archetto,* 93 R.I. 392, 176 A. 2d 73, app. dism., 369 U.S. 423 (1962) ..... 4

*Lundberg* v. *County of Alameda,* 46 Cal. 2d 644, 298 P. 2d 1, app. dism. *sub. nom. Heisey* v. *County of Alameda,* 352 U.S. 921 (1956) ..... 4

PAGE

*Methodist Episcopal Church, South* v. *Hinton*, 92 Tenn. 188, 21 S.W. 321 (1893) ..... 5

*Murray* v. *Comptroller of the Treasury*, 241 Md. 383, 216 A. 2d 897 (1966), cert. den., 385 U.S. 816 (1966) .. 5

*People ex rel. Church of St. Mary* v. *Feitner*, 168 N.Y. 494, 61 N.E. 762 (1901) ..... 5

*People ex rel. Watchtower Soc.* v. *Haring*, 8 NY 2d 350, 170 N.E. 2d 677 (1960) ..... 5

*Trustees of Griswold College* v. *State of Iowa*, 46 Iowa 275 (1877) ..... 5

In the

# Supreme Court of the United States

October Term, 1968

**No. 1415**

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Frederick Walz,

*Appellant,*

*against*

Tax Commission of the City of New York,

*Appellee.*

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ON APPEAL FROM THE COURT OF APPEALS
OF THE STATE OF NEW YORK

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## MOTION TO DISMISS APPEAL

The appellee moves pursuant to Rule 16 of the Rules of the Supreme Court of the United States to dismiss the appeal on the ground that some of the questions presented were not raised in the Courts below and all of them are so unsubstantial as not to need further argument.

### Preliminary Statement

The appellant has appealed from the order of the Court of Appeals of the State of New York, dated February 20, 1969, affirming an order of the Appellate Division of the Supreme Court of that State.

The opinion of the Court of Appeals is reported in 24 N Y 2d 30, 246 N.E. 2d 517, and its text is set forth in Appendix B of the appellant's jurisdictional statement (pp. 4a-5a). The Appellate Division decision is officially reported in 30 A D 2d 778, and the text of the order of affirmance is set forth in Appendix C of that statement (p. 6a). The memorandum opinion of the Special Term of the Supreme Court is not officially reported and is set forth in Appendix I to this motion.

By this appeal, the appellant challenges the constitutional validity of New York State Constitution, Article 16, §1, and New York Real Property Tax Law, §420, subd. 1, providing for exemption from taxation of real property owned by a religious corporation and used exclusively for religious purposes. It contends that such exemption contravenes the First and Fourteenth Amendments of the Constitution of the United States.

## Statement of the Case

The action was commenced on June 15, 1967, by the service of a summons and verified complaint upon the Tax Commission (9-12).* The Tax Commission served a verified answer containing three separate and distinct defenses, on June 28, 1967 (1, 13-15). Thereafter, appellant moved under CPLR, §§3212 and 3213, for an order striking out defendant's answer and directing the entry of summary judgment for appellant upon the cause of action set forth in the complaint (17-25). The appellee opposed the motion and under CPLR, §3211, also requested summary judgment

* Numbers in parentheses refer to pages in the New York Court of Appeals record on appeal.

dismissing the complaint (25-30). Appellant submitted an affidavit in reply (31-32).

The Special Term of the Supreme Court denied the appellant's motion for summary judgment and granted the appellee's cross-motion for summary judgment dismissing the complaint. Passing over the technical infirmities of the action, the Court upheld the constitutionality of the exemption, stating in a brief opinion, 'Such exemptions are granted in pursuance of long-standing public policy of this State, under a statute which is presumptively constitutional, and which is hereby sustained' (Appendix I to this motion).

The Appellate Division unanimously affirmed, without opinion (37-8). Upon appeal by appellant to the Court of Appeals of the State of New York that Court affirmed unanimously, with all but one judge concurring in a *per curiam* opinion (Appendix to Appellant's Jurisdictional Statement, pp. 4a-5a).

In essence, the pleadings relate that appellant, an attorney *pro se,* is a citizen of the United States and the owner in fee of real property located in the County of Richmond of New York City, designated on the Tax Map as Section 1, Block 198, Lot 210 (10). His complaint is that the tax exemption granted to religious corporations for real property owned and used by them for religious purposes for the tax year commencing July 1, 1[illegible], "constitutes an involuntary payment by plaintiff to aforementioned religious organizations, in violation of plaintiff's right of religious freedom" and confiscates his property "without due process of law, in violation of the provisions of the Constitution of the United States of America" (11-12).

The Tax Commission answered that the taxable status of real property owned by religious corporations was determined in accordance with the law appertaining thereto and that the appellant was neither aggrieved thereby nor deprived of any rights sufficient to state a cause of action (16, 30).

## ARGUMENT

**Tax exemptions for property of religious organizations do not violate the United States Constitution.**

**(1)**

In two recent cases this Court dismissed for "want of a substantial federal question" appeals from determinations sustaining the constitutionality of tax exemptions for religious organizations. *General Finance Corp.* v. *Archetto*, 93 R.I. 392, 176 A. 2d 73 (1961), app. dism., 369 U.S. 423 (1962); *Lundberg* v. *County of Alameda*, 46 Cal. 2d 644, 298 P. 2d 1 (1956), app. dism. *sub. nom. Heisey* v. *County of Alameda*, 352 U.S. 921 (1956).

The appellant's attempt to detract from the force of these decisions has no merit (Appl't's Jurisdictional Statement, p. 4). The comment that the first is distinguishable because plaintiff was a 'soulless' corporation is indeed idle. There is nothing in the opinion of the Court to lend substance to the conclusion that the corporate form of the plaintiff was in any way a persuasive factor. And as for the second, about which appellant states "the tax exemption benefited the public purpose of education," its wider pertinence and particular relevance to the issue herein is stated in the opinion of the Court as follows (298 P. 2d at p. 7):

"The practice of granting tax exemptions benefiting religious sects began in the colonial period. * * * Today, at least some tax exemption for religious groups is authorized by statutory or constitutional provisions in every state and the District of Columbia, as well as by federal law. See Note (1949) 49 Columb. L. Rev. 968, 969-982. No case has been found holding that the granting of such exemptions is contrary to state or federal constitutional provisions prohibiting the support or establishment of religion, and, where the matter has been raised, the exemptions have been upheld."

**(2)**

Other cases upholding the constitutionality of tax exemptions for religious institutions include the following: *Murray* v. *Comptroller of the Treasury,* 241 Md. 383, 216 A. 2d 897 (1966), cert. den., 385 U.S. 816 (1966); *Garrett Biblical Institute* v. *Elmhurst State Bank,* 331 Ill. 308, 163 N.E. 1, 5 (1928); *Trustees of Griswold College* v. *State of Iowa,* 46 Iowa 275, 282 (1877). See concurring opinion of BRENNAN, J. in *Abington School Dist.* v. *Schempp,* 374 U.S. 203, 301-302 (1963). Cf. *People ex rel. Watchtower Soc.* v. *Haring,* 8 NY 2d 350, 357-358, 170 N.E. 2d 677 (1960); *People ex rel. Church of St. Mary* v. *Feitner,* 168 N.Y. 494, 497, 61 N.E. 762 (1901); *Methodist Episcopal Church, South* v. *Hinton,* 92 Tenn. 188, 21 S.W. 321 (1893). See, *contra,* concurring opinion of DOUGLAS, J. in *Engel* v. *Vitale,* 370 U.S. 421, 437 (1962).

(3)

The cases relied on by appellant while they deal with the subject of establishment of religion or freedom of religion are not in point on the issue here involved (Applt's Jurisdictional Statement, p. 3). If anything, they strengthen the decision of the Courts below, that the exemption to which appellant objects does not constitute an advance of religion in violation of any constitutional guaranty.

## CONCLUSION

**The appeal from the order of the Court of Appeals of the State of New York should be dismissed.**

June 2, 1969.

Respectfully subnitted,

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Stanley Buchsbaum,
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